UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNI-CON FLOORS, INC., Plaintiff,)
v.)
BRICKLAYERS & ALLIED CRAFTSMEN UNION, LOCAL 3 – EASTERN MASS., Defendant,) Case No. 05-10463 NG)
and)
COLONIAL SURETY CO., Intervenor.)))

COLONIAL'S OPPOSITION TO LOCAL 3'S MOTION TO ATTACH PERSONAL PROPERTY

NOW COMES the Intervenor Colonial Surety Co. ("Colonial") and opposes the Motion To Attach Personal Property ("Motion") of the Defendant Bricklayer's & Allied Craftsmen Union, Local 3 – Eastern Massachusetts ("Local 3"). As reasons therefore, Colonial states as follows:

Pursuant to that certain General Indemnity Agreement ("Indemnity Agreement") (Exhibit A), which was recorded in the Uniform Commercial Code ("UCC") filings maintained by the Massachusetts Secretary of State, Colonial, as surety for Uni-Con Floors, Inc. ("Uni-Con"), has a perfected security interest in the personal property belonging to Uni-Con as Uni-Con has defaulted on two bonded public construction projects for which Colonial has undertaken completion of same. Furthermore, Colonial is informed certain materials located at Uni-Con's place of business, 2137 South Main

Street in Fall River, have been paid for by the general contractors for the defaulted projects and those materials rightfully belong to the project owners as "attic stock".

INTRODUCTION AND FACTS

Colonial is in the business of issuing performance and payment bonds on behalf of contractors to secure the contractors' performance of contracts on public and private construction projects. Uni-Con, a flooring subcontractor, requested Colonial issue statutory payment and performance bonds for Massachusetts public construction projects. On August 25, 1998, and to induce Colonial to issue performance and payment bonds, the Defendants executed that certain Indemnity Agreement in favor of Colonial. Exhibit A. On April 17, 2003, Colonial recorded the Indemnity Agreement as an exhibit to a UCC Financing Statement filed with the Massachusetts Secretary of State. Exhibit B. Local 3 obtained a judgment against Uni-Con on May 9, 2006, however the amount of the judgment has not yet been determined. See Local 3's Motion For Entry Of Order Of Judgment. Court Docket, No. 40.

New Bridgewater-Raynham Regional High School Project

On or about July 26, 2004, Uni-Con, as subcontractor, entered into a contract ("High School Subcontract") with Bacon Construction Co., Inc. ("Bacon"), as general contractor, wherein Uni-Con agreed to furnish the labor, materials and equipment necessary to perform certain tile work at the project known as the New Bridgewater-Raynham Regional High School Project in Bridgewater, Massachusetts ("High School Project"). Exhibit C, Nunziata Affid., ¶ 6.¹ On August 31, 2004, Colonial, as surety,

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¹ The original Affidavit Of Wayne T. Nunziata was filed in support of Colonial's Motion For Preliminary Injunction in that certain civil action <u>Colonial Surety Company v. Uni-Con Floors, Inc. et al.</u>, United States District Court, District of Massachusetts, Case No. 07-CV-10121 WGY ("Colonial Action"). <u>See</u> Colonial Action at Court Docket, No. 2.

furnished a performance bond and a labor and materials payment bond on behalf of Uni-Con, as principal, for Bacon, as obligee, for the High School Project. Exhibit C, Nunziata Affid., ¶ 7. On September 15, 2006, Bacon declared Uni-Con in default of the High School Subcontract and notified Colonial of same. Exhibit C, Nunziata Affid., ¶ 8.

On September 29, 2006, Bacon terminated Uni-Con and made demand upon Colonial, pursuant to Colonial's performance bond, to complete Uni-Con's High School Subcontract. Exhibit C, Nunziata Affid., ¶ 9. Upon termination of Uni-Con's Subcontract, Colonial, as surety, assumed completion of Uni-Con's High School Subcontract and established a reserve to cover the anticipated costs of completing same as well as potentially paying suppliers which furnished materials to Uni-Con for use at the High School Project. Exhibit C, Nunziata Affid., ¶ 10. The completion of the High School Project remains ongoing.

Williams Elementary School Project

On or about June 9, 2004, Uni-Con, as subcontractor, entered into a contract ("Williams School Subcontract") with Brait Builders Corporation ("Brait"), as general contractor, wherein Uni-Con agreed to furnish the labor, materials and equipment necessary to perform certain flooring work at the project known as the Williams Elementary School in Bridgewater, Massachusetts ("Williams School Project"). Exhibit C, Nunziata Affid., ¶ 12. On August 17, 2004, Colonial, as surety, furnished a performance bond and a labor and materials payment bond on behalf of Uni-Con, as principal, for Brait, as obligee, for the Williams School Project. Exhibit C, Nunziata Affid., ¶ 13.

On September 9, 2006, Brait declared Uni-Con in default of the Williams School Subcontract and notified Colonial of its obligation under the performance bond to cure Uni-Con's default on the Williams School Subcontract. Exhibit C, Nunziata Affid., ¶ 14. Colonial, as surety, promptly assumed completion of Uni-Con's Williams School Subcontract and established a reserve to cover anticipated costs. Exhibit C, Nunziata Affid., ¶ 15.

The General Indemnity Agreement

Pursuant to the Indemnity Agreement, Uni-Con, as an Indemnitor, assigned, effective as of the date of each bond issued there under, all rights in connection with any bonded contract including all machinery, facilities, equipment, tools, materials or supplies which are used or required in connection with the bonded contracts. Exhibit A at ¶ 8. This provision applies to all materials ordered for a bonded contract, whether located at the site of the work, or elsewhere. The Indemnity Agreement further defines the principal, Uni-Con, as being in default with respect to a bonded contract if, *inter alia*, the principal breaches, abandons or repudiates the contract, or if the obligee or any beneficiary of a bond declares the principal to be in default. Exhibit A at ¶ 5.

Upon default, Colonial, as surety, may, *inter alia*, assume administration of any contract and arrange for completion thereof, take possession of the principal's equipment, materials, office, books and records, etc. as may be necessary for the completion of the contract. Exhibit A at ¶ 6 and Exhibit C, Nunziata Affid., ¶ 19. Colonial has set a reserve of \$400,000.00 and has, to date, paid \$381,597.97 in completing Uni-Con's work on the High School Project and the Williams School Project. Exhibit C, Nunziata Affid., ¶ 25. To date, the Indemnitors have not made any payments to Colonial (Exhibit C,

Nunziata Affid., ¶ 26) and as a result, Colonial commenced that certain civil action Colonial Surety Company v. Uni-Con Floors, Inc. et al., United States District Court, District of Massachusetts, Case No. 07-CV-10121 WGY to recover the losses suffered on the two bonded projects.

ARGUMENT

Colonial has previously perfected a security interest in the personal property belonging to Uni-Con. Pursuant to the Indemnity Agreement (Exhibit A), which was recorded in the UCC filings maintained by the Massachusetts Secretary of State (Exhibit B), Colonial perfected its security interest in the personal property of Uni-Con, which is superior to Local 3's interest a mere judgment holder. Furthermore, the materials located at Uni-Con's place of business, 2137 South Main Street in Fall River, have been paid for by the general contractors for the defaulted projects and those materials rightfully belong to the project owners as "attic stock" and therefore is not personal property of Uni-Con subject to an attachment.

I. Colonial's Perfected Security Interest In Uni-Con's Personal Property Predates Local 3's Judgment

Colonial's security interest in Uni-Con's property is effective as of August 17, 2004 and August 31, 2004, the dates of the surety bonds for the Williams School Project and the High School Project, respectively. Exhibit A at ¶ 8. The Indemnity Agreement specifically provides as follows:

- 8. Assignment. As security for the performance of all of the provisions of this Agreement, each indemnitor hereby:
- A. assigns, transfers, pledges and conveys to [Colonial] any and all claims of such indemnitor against, or any sums due and owing to such indemnitor by, [Uni-Con] and (effective as of

the date of each Bond) all rights in connection with any Contract, including but not limited to:

2. all machinery, facilities, equipment, tools, materials or supplies which are used or required in connection with the Contracts, including all materials ordered for the Contracts, whether located at the site of the work under such Contracts, or elsewhere;

Exhibit A at \P 8A(2).

"A security interest is defined as 'an interest in personal property or fixtures which secures payment or performance of an obligation." First International Bank v. Continental Casualty Co., No. 03-00122, 2004 Mass. Super. LEXIS 143, at *5 (Super. Ct., Hampden County, Apr. 16, 2004) (quoting Mass. Gen. L. c. 106, § 1-207(37)). Colonial's security interest in Uni-Con's personal property secures the performance of Uni-Con's bonded contracts. Through the Indemnity Agreement, Colonial has obtained a security interest in the personal property of Uni-Con, and Colonial has perfected its security interest by filing a financing statement with the Secretary of State. See Exhibit B.

Although Local 3 obtained a judgment against Uni-Con on May 9, 2006, such judgment is not perfected as a lien against particular property until a writ of attachment is issued by a court of competent jurisdiction. Smith Barney, Harris Upham & Company, Inc. v Connolly, 887 F. Supp. 337, 342 (D. Mass. 1994). Without an attachment for specific property, Local 3 is merely the holder of a judgment, and not a judgment lien holder. Id. at 342 (discussing "choateness" test for purpose of federal tax lien priority, which test requires lien specifically identify lienor, property subject to lien, and amount of lien). As Local 3 is presently seeking such a lien via the Motion To Attach Personal

Property, it has yet to perfect any interest in Uni-Con's personal property that it may have pursuant to its judgment against Uni-Con. Thus, Local 3 is not a judgment lien creditor².

Clearly, Colonial's perfected security interest in the personal property of Uni-Con predates, and therefore is superior to, Local 3's interest as only a mere holder of a judgment.

II. Certain Materials Stored At Uni-Con's Warehouse As **Attic Stock Were Paid For By The General Contractors**

Pursuant to the Uni-Con's Subcontracts for the Williams School Project and the High School Project, Uni-Con was to furnish additional flooring material that the schools would possess for any future repairs, etc. In the parlance of the construction industry, such additional building material is known as "attic stock". Colonial is informed, and therefore believes, that Uni-Con was storing attic stock for the Williams School Project and the High School Project at 2137 South Main Street, Fall River. As Colonial is a performing surety for these two projects, Colonial is responsible to furnish the attic stock required by Uni-Con's Subcontracts. Furthermore, the general contractors for the School Projects have already paid, on behalf of Uni-Con, the suppliers of the attic stock. As such, the attic stock located at Uni-Con's place of business is not Uni-Con's property, and thus rightfully belongs to the general contractors until the attic stock is turned over to the owners of the two School Projects. Therefore, the attic stock located at 2137 South Main Street, Fall River is not personal property of Uni-Con, and thus is not subject to attachment by Uni-Con's creditors.

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² "A 'judgment lien creditor' is defined in the Treasury Regulations as 'a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or a certain sum of money." Smith Barney, 887 F. Supp. at 342 (quoting Treas. Reg. § 301.6323(h)-1(g) (1976)).

CONCLUSION

WHEREFORE, Colonial Surety Co. requests Local 3's Motion To Attach Personal Property be denied; and/or such other relief as the Court deems just and proper.

> COLONIAL SURETY CO. By its attorney,

Dated: February 7, 2007

/s/ Francis A. Shannon, III Francis A. Shannon, III, Esq. BBO # 560651 Shannon Law Associates, Inc. One Bowdoin Square, 9th Floor

Boston, MA 02114 (617) 263-1313

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true copy of the above document upon the following parties by electronically filing through this Court's CM/ECF filing system and by first class mail, postage prepaid, this 7th day of February, 2007:

Jonathan M. Conti, Esq. Feinberg, Campbell & Zack, P.C. 177 Milk Street Boston, MA 02109

David M. Fleury, Esq. Carmichael & Zajac, P.C. 170 High Street Taunton, MA 02780

/s/ Francis A. Shannon, III Francis A. Shannon, III, Esq.

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Harrisburg, Pennsylvania

Administrative Office: 50 Chestnut Ridge Road, Montvale, New Jersey 07645

GENERAL INDEMNITY AGREEMENT

THIS AGREEMENT of Indemnity, made and entered into this 25th day of August 1988, Is executed by the under PANY (the "Company") and any other entity who may act as Surety, as hereinafter defined, in connection with any COLONIAL SURETY COM. Un1-Con Floors. The
Un1-Con Floors. Inc.
P.O. Box 267, 2137A S. Main Street Fall River, MA 02724-0267
(hereinafter referred to as the "Principal.") (address)

NOW THEREFORE, in consideration of and in connection with the Company's execution or procurement at the request of indemnitor of the suretyship for which application is now pending, or which may be hereafter applied for, or other suretyship in lieu thereof or in lieu of suretyship now outstanding, or in connection therewith, indemnitor and the Company hereby undertake and agree:

1. DEFINITIONS... The following terms, when capitalized in this Agreement have the meanings set forth herein:

Bond - Any contractual obligation undertaken by Surety for Principal, before or after the date of this Agreement, and any renewal, after the date of this Agreement, and any renewal, after the processor in interest, whether slopp or in

teration, modification or extension of said obligation.

Principal - The person or entity set forth above or any one of combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not.

Surety - COLONIAL SURETY COMPANY, its reinsurers, and any other person or entity which the Company may procure to act as aurety or co-surety on any Bond or any other person or entity who executes any Bond at the Company's request.

Contract - Any agreement of or other undertaking by Principal, the personmance of which is bonded by Surety and all extensions, modifications and renewals thereof, whether made before or after the date of this Agreement.

- 2. PREMIUM. Indemnitor will pay, or cause to be paid, to the Company, as and when each and every Bond is executed, the premium therefore, calculated on contract price in accordance with the regular scheduled rates of the Company then in force, and annually thereafter (except when the renewals or extensions thereof) in accordance with such rates until Indemnitor shall serve upon the Company competent, written, legal evidence satisfactory to the Company of its final discharge from suretyship. All premium shall serve upon the Company competent, written, legal evidence overruns, Indemnitor shall pay to the Company, upon audit, any additional premium which is due to the Company. It is understood and agreed that all premium is FULLY EARNED UPON issuance of the bond AND is NOT REFUNDABLE. Non-Payment of premium obligation by Principal (Indemnitor) constitutes default of its obligations as outlined in this agreement.
- S. INDEMNITY. Indemnitor and his audoessors agree to perform all the conditions of each Bond and to indemnity and save harmless Surety from and against any and ell (i) demands, liabilities, loss, costs, damages or expenses of whatever nature or kind, including fees of stiorneys and all other expenses, including but not limited to costs and fees of livestigation, adjustment of claims, procuring or attempting to procure the discharge of Bonds and in attempting to recover losses or expenses from indemnitors or third parties, whether or not Surety shall have paid out any or all of such sums, (ii) amounts sufficient to discharge any claim made against Surety on any Bond, which amounts may be used by Surety to pay such claim, or may be held by Surety as collateral security against any loss on any Bond, and (iii) any premiums due on Bonds issued by the Surety on behalf of the Principal (the "Indemnity").

4. RIGHTS OF SURETY. In furtherance of the indemnity hereunder:

A. Surety shall have the right in its sole discretion to determine whether any claims shall be paid, compromised, defended, prosecuted or appealed.

B. Surety shall have the right to incur such expenses in handling a claim as it deems necessary or advisable, including but not limited to the expense for investigative, accounting, engineering and legal services, and Surety's good faith determination as to the necessity or advisability of any such expense shall be final and conclusive upon indemnitor.

C. Surety shall have the foregoing rights, irrespective of the fact that indemnitor may have assumed, or offered to assume, the detense of Surety upon such claim.

D. In any claim or sult hereunder, an itemized statement of the aforesald loss and expense, sworn to by an officer of Surety.

On the surety shall have the foregoing rights, irrespective of the fact that indemnitor may have assumed, or officer of Surety.

D. In any claim or sult hereunder, an itemized statement of the aforesald loss and expense, sworn to by an officer of Surety.

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D. In any claim or suit hereunder, an itemized statement of the aloresald loss and expense, sworn to by an officer of Surety, or the vouchers or other evidence of disbursement by Surety, shall be prima facie evidence of the fact and extent of the lia-

E. Surety shall have the right to reimbursement of its expenses, premiums and attorneys' fees hereunder, irrespective of whether any Bond loss payment has been made by Surety. Surety may recover from Indemnitor its expenses and attorneys' face incurred in prosecuting or defending any action erising out of or relating to this Agreement.

- 5. DEFAULT. Principal shall be in Default with respect to a Contract if any of the following occur:

 A. Principal breaches, abandons or repudiates any Contract.

 B. Any beneficiary of a Bond or obligee of a Contract declares Principal to be in default.

 C. Principal fails to pay for any labor or materials when such payment is due.

 D. Principal diverts any Contract funds from one Contract to another, prior to the complete discharge of Surety.

 E. Principal or any Indemnitor breaches any provision of this Agreement.

 F. Principal or any Indemnitor becomes the subject of any Agreement or proceedings, voluntary or involuntary, of iliquidation, insolvency, bankruptcy, reorganization, receivership, trusteeship, or assignment for creditors or actually becomes insolvent.
 - G. Principal, if an individual, dies, is adjudged mentally incompetent, convicted of a felony, becomes a fugitive from justice or disappears and cannot be located without costly or extraordinary methods.
- 6. REMEDIES UPON DEFAULT. In the event of Default, as defined above, Surety may at its option and sole discretion take any or all of the following actions:

A. assume the administration of any Contract and arrange for its completion;

B. take possession of and operate and use the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract without liability for any rental for or liability for losses arising from such use;

C. take possession of and operate and use the office equipment, books and records of Principal as are necessary for

completion of any Contract;
D. loan such funds or guarantee a loan for such funds as Surety shall deam necessary for the completion of any Contract and for the discharge of Surety in connection with any Contract Repayment of such loan shall be covered by the Indemnity hereunder; E. file an immediate sult to enforce any or all of the provisions of this Agraement.

7. COLLATERAL SECURITY. If a claim is made against Surety, or if Surety deems it necessary to establish a reserve for potential claims, and upon demand from Surety, indemnitor shall deposit with Surety cash or other property acceptable to Surety, as collateral security, to protect Surety with respect to such claim or potential claims and any expense or attorneys' fees, Such collateral security shall be in such amount as Surety on its sole and absolute discretion deems appropriate. Such collateral may be held by Surety until it has received evidence of its complete discharge from such claim or potential claims, and until it has been fully reimbursed for all loss, expense and attorneys' fees.

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- ASSIGNMENT. As security for the parformance of all of the provisions of this Agreement, each indemnitor hereby:

 A. assigns, transfers, pledges and conveys to Surely any and all claims of such indemnitor against, or any sums due and conveys to Surely any and all claims of such indemnitor against, or any sums due and tract, including but not ilmited to:

all subcontracts made in connection with a Contract and such subcontractors' surety bonds;
 all machinary, facilities, equipment, tools, materials or supplies which are used or required in connection with the Contracts, including all materials ordered for the Contracts, whether located at the site of the work under such Contracts, or

elsewhere;
3. all accounts receivable, including any and all sums due or which may thereafter become due under a Contract and all sums due or to become due on all other contracts, bonded or unbonded, in which any indemnitor has an interest; and 4. all rights arising out of insurance policies held by any indemnitor, or of which any indemnitor is a beneficiary; and 5. agrees that all monies earned by Principal under any Contract are trust funds, whether in possession of Principal or of such Contract for which Surety would or could be liable under any Bond for such Contract.

2. POWER OF ATTORNEY. The Undersigned hereby irrevocably nominate, constitute, appoint and designate the Company or its designee as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights assigned, transferred and set over to Surety by the Undersigned in this Agreement, and to make, execute and deliver any and all additional or other assignments, documents, instruments or papers, including but not ilmited to vouchers, releases, bills of sale, financing exterements and schedules thereto and the endorsements of checks or other instruments representing payment of Contract monies, and any other document deemed necessary or appropriate by Surety to give full effect, not only to the internation of the within assignment, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreency is irrevocable and is coupled with an interest and shall survive the subsequent disability or incapacity of any or all the Undersigned.

10. GENERAL PROVISIONS.

- A. The obligations of the Undersigned hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the Undersigned as causes of action may accrue hereunder. Surety need not proceed first against the Principal.

 B. Indemnitor will, on request of Surety, procure the discharge of Surety from any Bond, and all liability by reason thereof.

 C. Indemnitor(s) warrant that each of them is specifically and beneficially interested in the obtaining of each Bond.

 D. Indemnitor waives notice of any Default, the making of a claim against Surety, Surety's loaning funds to Principal or any defense which could arise by the granting by Surety of any indulgence to the Principal.

 E. Indemnitor agrees to give to Surety prompt notice of any facts which might give rise to any claims or suit against Surety upon any Bond.

upon any Bond.

F. Surety shall have the right, at its option and in its sole discretion, to decline execution of any Bond, including Performance and Payment Bonds when it has furnished a Bid Bond.

G. Surety may consent to any changes or alterations in a Contract, without affecting the liability hereunder of indemnitor.

H. Surety shall have every right, defense or remedy which a personal surety without compensation would have, including

the right of excheration.

1. Until Surety shall have been furnished with conclusive evidence of its discharge without loss from any Bonds, and until Surety has been otherwise fully indemnified as hereunder provided. Surety shall have the right to free access to the books, records and accounts of indemnifor for the purpose of examining and copying them. Undersigned hereby authorize third parties, including but not limited to depositories of funds of the Undersigned, to furnish to Surety any information requested by Surety in Connection with any transaction. Surety may furnish any information, which it now has or may hereafter acquire concerning the Undersigned, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of advising such nersons. Items or entities as it may deem appropriate. persons, firms or entities as it may deem appropriate.

J. Indemnitor waives all right to claim any property, including homestead, as exempt from legal process in any action

Indempitor waives all right to claim any property, including itomestead, as exempt from legal process in any settion hereunder.

K. If the execution hereof by any Indemnitor may be detective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other Indemnitor. Invalidity of all or part of any provision hereof by reason of the law of any jurisdiction or for any other reason shall not render the remainder of this Agreement Invalid.

L. The Surety may, at its option, file or record this Agreement or any other document executed by any or all indemnitors, individually or jointly. In connection with application, issuance or execution of any Bond coming within the scope of this instrument, as a security agreement or as a part of a financing statement or as a notice of its prior interest and assignment under that the filing or recording of such document shall be solely at the option of Surety and that the failure to do so shall not release or impair any of the obligations of Indemnitor under this Agreement.

M. Surety shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein.

N. Indemnitor walves any defense that this instrument was executed subsequent to the date of any such Bond, admitting and covenanting that such Bond was executed pursuent to indemnitor's request and in reliance on indemnitor's promise to execute this instrument.

O. This Agreement (including this section) may not be changed or modified orally. No change or modification shall be effective unless specifically agreed in writing by each party against whom enforcement is sought.

P. In the event that any indemnitor shall (i) fail to execute this instrument; or (ii) become insolvent; or (iii) fail to be bound as aforesaid.

as accession.

Q. Repeated actions may be brought under this Agreement as breaches thereof may occur, without any former action operating as a bar to any subsequent action.

R. Wherever used in this instrument the plural shall include the singular and the singular shall include the plural, as the

S. The liability of Indemnitor hereunder shall not be affected by the failure of the Principal to sign any Bond or by any claim that other indemnity or security was to have been obtained, nor by the release of any Indemnity or the return or exchange of any colleteral, that may have been obtained.

- 11. TERMINATION. This Agreement is a continuing obligation of indemnitor unless terminated by written notice to Surety as hereinafter provided, and such termination as to an indemnitor shall in no way affect the obligation of any other indemnitor who has not given such notice. The illearned by Surety about the Principal, even though such facts materially increase the risk beyond that which indemnitor might intend to assume. Surety may have reason to believe such facts are unknown to Indemnitor, and Surety may have reasonable opportunity to communicate such facts to Indemnitor and the Undersigned hereby waive notice of such facts. In order to terminate liability as to future Bonds of Principal, an indemnitor might.
 - give written notice by certified or registered mail to Surety at its Administrative Office, Montvale, New Jersey, of such termination; and
 - state in such notice the effective date (not less than thirty days after receipt thereof by Surety) of termination of such Indemnitor's liability to future Bonds.

- After the effective date of such termination, any indemnitor who was given notice shall nonetheless be liable hereunder for:

 A. Bonds executed or authorized prior to such date, and renewals, substitutions and extensions thereof; and

 B. Bonds executed pursuant to a bid or proposal Bond executed or authorized prior to such date and renewals, substitutions and extensions thereof; and
 - C. any maintenance or guarantee Bonds executed incidental to any other Bond executed prior to such date, and renewals, substitutions and extensions thereof.

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By Sherryanne Do Pesso

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	For Acknowledgement of F	Incinate Signature
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Š	being by me duly sworn, deposes and says that he resides in	, to me known, who
ž l	the corporation described in and which associated the	of Uni-Gon Flaces In a that he is the
CORPORATE ACKNOWLEDGEMENT	comes Katherine L. Hebert being by me duly sworn, deposes and says that he resides in the corporation described in and which executed the foregoin that the seal affixed to the said instrument is such corporate sors of said corporation, and that he signed his name thereto be	g instrument; that he knows the seal of the said corporation eal; that it was so affixed by the order of the Board of Directly like order.
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THE PARTMERSHIP		Notary Public Guy Massa (Seal and Address)
	STATE OF	(Oval and Address)
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	·	Notary Public
		(Seal and Address)
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	the corporation described in and which executed the foregoing that the seal affixed to the said instrument is such corporate seal said corporation, and that he signed his name thereto by like a	instrument; that he knows the seal of the said corporation;
		Notary Public (Seal and Address)
	STATE OF MA	
	COUNTY OF Bristol ss.:	
	On this 25th day of August	, 19 98 , before me personally
	came Katherine L. Hebert	
	be the person(s) (or member of the firm) described in and who acknowledged to me that he executed the same.	executed the foregoing instrument, and that he thereupon
	My commission expires December 20, 2002	Notary Public Guy Massa
	2002	Notery Public Guy Massa (Seal and Address)
	STATE OF MA	
	COUNTY OF Bristol ss.:	
	On this 25th day of August	, 19 98 , before me personally
	came Scott Hebert	
	be the person(s) (or member of the firm) described in and who acknowledged to me that he executed the same.	executed the foregoing instrument, and that he thereupon
	My commission expires December 20, 2002	Ly Min
	- The state of the	Notary Public / Guy Massa (Seal and Address)

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COUNTY OF	55.:		
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On this day of comes being by me duly sworn, deposes and say the corporation described in and which a	<u> </u>	, in the year 19	, before me persona
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		Notary Public (Seal and Address)	V
TATE OF MA	·····		
OUNTY OF Bristol	\$8.:		
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ame John A. Pacheco	A CONTRACTOR OF THE PROPERTY O	, to me kno	
s the person(s) (or member of the firm) d knowledged to me that he executed the s	escribed in and who executed ame,	the foregoing instrument	and that he thereupon
y commission expires December	20, 2002	Notary Public (Seal and Address)	Guy Massa
ATE OF MA		(ver and radiuse)	
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IMDIVIDUAL OR PARTMERSHIP	be the person(s) (or member of the acknowledged to me that he execu	e firm) described in and ted the same,	, to me who executed the foregoing instrum	ent, and that he thereupor
<u> </u>			Notary Public	
		and the second	(Seal and Address)	
	For Ackn	owledgement of individ	uai indemnitor's Signatures	
ā I	STATE OF			
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	that the seal affixed to the said instru	nich executed the torego Ment is such corporate se	PING INStrument; that he knows the s eal: that it was so effixed by the order	eal of the said corporation; of the Board of Directors of
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			Notary Public (Seal and Address)	
1	STATE OF MA		Notary Public (Seal and Address)	
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Montvale, NJ 07645					
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4. This FINANCING STATEMENT covers the following collecteral:		1	110	V/043	USA
All Debtor's rights, title and interest	in and to the	e collateral	descr	ribed in "Gen	eral
machinery, inventory and equipment and	nereto as .	Exhibit "A"	includ	ling (1) all	
SAMPLE OF PEOPLE OF TOW OWING OF DELEGISTED	r acquired by	y Debtor; and	1 (2)	all accounts	and
contract rights.					

5. ALTERNATIVE DESIGNATION (Fapplicable): LESSEE/LESSOR			LER/BUYER AG. LIËN	NON-UCCFILING
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8. OPTIONAL FILER REFERÊNCE DATA				1222

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PAGE 08

Harrisburg, Pennsylvania

Administrative Office: 50 Chestnut Ridge Road, Montvale, New Jersey 07645

GENERAL INDEMNITY AGREEMENT

THIS AGREEMENT of Indemnity, made and entered into this 25thday of August 1998, is executed by the undersigned (jointly and severally, including the Principal as defined below, "Indemnitor") for the purpose of indemnifying COLONIAL SURETY COMPANY (the "Company") and any other entity who may act as Surety, as hereinafter defined, in connection with any Bonds written on behalf of: P.O. Box 267, 2137A S. Main Street Fall River, MA 02724-0267

(hereinafter referred to as the "Principal.")

(address)

NOW THEREFORE, in consideration of and in connection with the Company's execution or procurement at the request of indemnitor of the suretyship for which application is now pending, or which may be hereafter applied for, or other suretyship in lieu thereof or in lieu of suretyship now outstanding, or in connection therewith, indemnitor and the Company hereby undertake and agree:

DEFINITIONS.. The following terms, when capitalized in this Agreement have the meanings set forth herein:

Bond - Any contractual obligation undertaken by Surety for Principal, before or after the date of this Agreement, and any renewal, alternation, modification or extension of said obligation.

Britished The agreement and any renewal, alternation that are their supported by the agreement and any renewal, alternation that are their supported by the agreement and any renewal, alternation that are their supported by the agreement and any renewal, alternation that are their supported by the agreement and any renewal, alternation that are their supported by the agreement and any renewal, alternation of said obligation.

teration, modification or extension of said obligation.

Principal - The person or entity set forth above or any one of combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not.

Surety - COLONIAL SURETY COMPANY, its reinsurers, and any other person or entity which the Company may procure to set as surety or co-surety on any Bond or any other person or entity who executes any Bond at the Company's request.

Contract - Any agreement of or other undertaking by Principal, the performance of which is bonded by Surety and all extensions, modifications and renewals thereof, whether made before or after the date of this Agreement.

- 2. PREMIUM. Indemnitor will pay, or cause to be paid, to the Company, as and when each and every Bond is executed, the premium therefore, calculated on contract price in accordance with the regular scheduled rates of the Company than in force, and annually thereafter (except when the renewals or extensions thereof) in accordance with such rates until Indemnitor shall serve upon the Company competent, written, legal evidence satisfactory to the Company of its final discharge from suretyship. All premium shall serve upon the Company competent, written, legal evidence overruns, Indemnitor shall pay to the Company, upon audit, any additional premium which is due to the Company. It is understood and agreed that all premium is FULLY EARNED UPON issuance of the bond AND is NOT REFUNDABLE. Non-Payment of premium obligation by Principal (Indemnitor) constitutes default of its obligations as outlined in this agreement.
- 3. INDEMNITY. Indemnitor and his successors agree to perform all the conditions of each Bond and to indemnity and save harmless Surety from and against any and all (I) demands, liabilities, loss, costs, damages or expenses of whatever nature or kind, including fees of attorneys and other expenses, including but not limited to costs and fees of investigation, adjustment of claims, procuring or attempting to procure the discharge of Bonds and in attempting to recover losses or expenses from indemnitors or third parties, whether or not Surety shall have paid out any such claim, or may be held by Surety as collateral security against any loss on any Bond, which amounts may be used by Surety to pay ty on behalf of the Principal (the "Indemnity").
- 4. RIGHTS OF SURETY. In furtherance of the indemnity hereunder:

Surety shall have the right in its sole discretion to determine whether any claims shall be paid, compromised, de-

A. Surety shall have the right to his sole discretion to determine whether any owners are pealed.

B. Surety shall have the right to incur such expenses in handling a claim as it deems necessary or advisable, including but not limited to the expense for investigative, accounting, engineering and legal services, and Surety's good faith determination as to the necessity or advisability of any such expense shall be final and conclusive upon indemnitor.

C. Surety shall have the forecoing rights, irrespective of the fact that Indemnitor may have assumed, or offered to assume.

C. Surety shall have the foregoing rights, irrespective of the fact that indemnitor may have assumed, or offered to assume, the defense of Surety upon such claim.

D. In any claim or sult hereunder, an itemized statement of the aforesald loss and expense, sworn to by an officer of Surety, or the vouchers or other evidence of disbursement by Surety, shall be <u>prima facle</u> evidence of the fact and extent of the liability hereunder of indemnitor.

E. Surety shall have the right to reimbursement of its expenses, premiums and attorneys' fees hereunder, irrespective of whether any Bond loss payment has been made by Surety. Surety may recover from Indemnitor its expenses and attorneys' fees incurred in prosecuting or defending any action erising out of or relating to this Agreement.

5. DEFAULT. Principal shall be in Default with respect to a Contract if any of the following occur:

A. Principal breaches, abandons or repudiates any Contract.

B. Any beneficiary of a Bond or obligee of a Contract declares Principal to be in default.

Principal fails to pay for any labor or materials when such payment is due.

Principal diverts any Contract funds from one Contract to another, prior to the complete discharge of Surety.

- Principal or any indemnitor breaches any provision of this Agreement.

 Principal or any Indemnitor breaches any provision of this Agreement or proceedings, voluntary or involuntary, of liquidational or any Indemnitor becomes the subject of any Agreement or proceedings, voluntary or involuntary, of liquidational or any Indemnitor becomes insolved to the subject of any Agreement or proceedings, voluntary or involuntary, of liquidational or any Indemnitor becomes insolved to the subject of any Agreement or proceedings, voluntary or involuntary, of liquidation or any Indemnitor becomes the subject of any Agreement or proceedings, voluntary or involuntary, of liquidation or any Indemnitor becomes the subject of any Agreement or proceedings. tion, insolvency, bankruptcy, reorganization, receivership, trusteeship, or assignment for creditors or actually becomes insol-
- G. Principal, if an individual, dies, is adjudged mentally incompetent, convicted of a felony, becomes a fugitive from justice or disappears and cannot be located without costly or extraordinary methods.
- REMEDIES UPON DEFAULT. In the event of Default, as defined above, Surety may at its option and sole discretion take any or all of the following actions:

A. assume the administration of any Contract and arrange for its completion;

B. take possession of and operate and use the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract without flability for any rental for or liability for losses arising from such use:

C. take possession of and operate and use the office equipment, books and records of Principal as are necessary for

completion of any Contract;
D. loan such funds or guarantee a loan for such funds as Surety shall deam necessary for the completion of any Contract and for the discharge of Surety in connection with any Contract. Repayment of such loan shall be covered by the Indemnity hereunder;
E. file an immediate sult to enforce any or all of the provisions of this Agreement.

7. COLLATERAL SECURITY. If a claim is made against Surety, or if Surety deems it necessary to establish a reserve for potential claims, and upon demand from Surety, indemnitor shall deposit with Surety cash or other property acceptable to Surety, as collateral security, to protect Surety with respect to such claim or potential claims and any expense or attorneys' fees. Such collateral security shall be in such amount as Surety on its sole and absolute discretion deems appropriate. Such collateral may be held by Surety until it has received evidence of its complete discharge from such claim or potential claims, and until it has been fully reimbursed for all loss, expense and attorneys' fees.

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 As Security for the performance of all of the provisions of this Agreement, each Indemnitor hereby:
 As assigns, transfers, piedges and conveys to Surely any and all claims of such Indemnitor against, or any sums due and cowing to such Indemnitor by, the Principal and (effective as of the date of each Bond) all rights in connection with any Contract, including but not limited to:

 - all subcontracts made in connection with a Contract and such subcontractors' surety bonds;
 all machinery, facilities, equipment, tools, materials or supplies which are used or required in connection with the Contracts, including all materials ordered for the Contracts, whether located at the site of the work under such Contracts, or

 - elsewhere;
 3. all accounts receivable, including any and all sums due or which may thereafter become due under a Contract and all sums due or to become due on all other contracts, bonded or unbonded, in which any indemnitor has an interest; and 4. all rights arising out of insurance policies held by any indemnitor, or of which any indemnitor is a beneficiary; and 5. agrees that all monies earned by Principal under any Contract are trust funds, whether in possession of Principal or of such Contract for which Surety would or could be liable under any Bond for such Contract.
- 9. POWER OF ATTORNEY. The Undersigned hereby irrevocably nominate, constitute, appoint and designate the Company or its designee as their attorney—in-fact with the right, but not the obligation, to exercise all of the rights assigned, transferred and set over to Surety by the Undersigned in this Agreement, and to make, execute and deliver any and all additional or other assignments, documents, instruments or papers, including but not ilimited to vouchers, releases, bills of sale, financing statements and schedules thereto and the endorsements of checks or other instruments repeated in the senting payment of Contract monies, and any other document deemed necessary or appropriate by Surety to give full effect, not only to the intended to be herein given to the Surety under all other provisions of this Agreeness is irrevocable and is coupled with an interest and shall survive the subsequent disability or incapacity of any or all the Undersigned.

10. GENERAL PROVISIONS.

- idvisions.

 A. The obligations of the Undersigned hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the Undersigned as causes of action may accrue hereunder. Surety need not proceed first against the Principal.

 B. Indemnitor will, on request of Surety, procure the discharge of Surety from any Bond, and all liability by reason thereof.

 C. Indemnitor(s) warrant that each of them is specifically and beneficially interested in the obtaining of each Bond.

 D. Indemnitor waives notice of any Default, the making of a claim against Surety, Surety's loaning funds to Principal or any defense which could arise by the granting by Surety of any indulgence to the Principal.

 E. Indemnitor agrees to give to Surety prompt notice of any facts which might give rise to any claims or suit against Surety upon any Bond.

upon any Bond.

F. Surety shall have the right, at its option and in its sole discretion, to decline execution of any Bond, including Performance and Payment Bonds when it has furnished a Bid Bond.

G. Surety may consent to any changes or alterations in a Contract, without affecting the liability hereunder of Indemnitor.

H. Surety shall have every right, defense or remedy which a personal surety without compensation would have, including the right of exoneration.

the right of expneration.

I. Until Surety shall have been furnished with conclusive evidence of its discharge without loss from any Bonds, and until Surety has been otherwise fully indemnified as hereunder provided. Surety shall have the right to free access to the books, records and accounts of indemnitor for the purpose of examining and copying them. Undersigned hereby authorize third parties, including but not limited to depositories of funds of the Undersigned, to furnish to Surety any information requested by Surety in Undersigned, to other persons, firms or entities for the purpose of propuring co-suretyship or reinsurance or of advising such J. Indemnitor walves all right to claim any property, including homestead, as exempt from legal process in any section hereunder.

hereunder.

K. If the execution hereof by any indemnitor may be delective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other indemnitor. Invalidity of all or part of any provision hereof by reason of the law of any jurisdiction or for any other reason shell not render the remainder of this Agreement Invalid.

The Surety may, at its option, file or record this Agreement or any other document executed by any or all indemnitors, individually or jointly, in connection with application, issuance or execution of any Bond coming within the scope of this instrute, as a security agreement or as a part of a financing sistement or as a notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency, but the filing or recording of such document shall be solely at the option of Surety and that the failure to do so shall not release or impair any of the obligations of indemnitor under this Agreement.

M. Surety shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein.

N. Indemnitor walves any defense that this instrument was executed subsequent to the date of any such Bond, admitting and covenanting that such Bond was executed pursuant to indemnitor's request and in relignce on indemnitor's promise to

execute this instrument.

O. This Agreement (including this section) may not be changed or modified orally. No change or modification shall be effective unless specifically agreed in writing by each party against whom enforcement is sought.

P. In the event that any indemnitor shall (i) fall to execute this instrument; or (ii) become insolvent; or (iii) fail to be bound hereby for any reason, the remaining indemnitors shall, nevertheless, be bound hereunder for the full amount of the liability

As aforesaid.

Q. Repeated actions may be brought under this Agreement as breaches thereof may occur, without any former action operating as a bar to any subsequent action.

R. Wherever used in this instrument the plural shall include the singular and the singular shall include the plural, as the

S. The liability of indemnitor hereunder shall not be affected by the failure of the Principal to sign any Bond or by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity or the return or exchange of any collateral, that may have been obtained.

- 11. TERMINATION. This Agreement is a continuing obligation of indemnitor unless terminated by written notice to Surety as hereinafter provided, and such termination as to an indemnitor shall in no way affect the obligation of any other indemnitor who has not given such notice. The il-builty of Indemnitor hereunder as to future Bonds of Principal shall not terminate by reason of the failure of Surety to disclose facts known or learned by Surety about the Principal, even though such facts materially increase the risk beyond that which indemnitor might intend to assume. Surety may have reason to believe such facts are unknown to Indemnitor, and Surety may have reasonable opportunity to communicate such facts to Indemnitor and the Undersigned hereby waive notice of such facts. In order to terminate liability as to future Bonds of Principal, an indemnitor must.
 - give written notice by certified or registered mail to Surety at its Administrative Office, Montvale, New Jersey, of such termination; and
 - B. state in such notice the effective date (not less than thirty days after receipt thereof by Surety) of termination of such

After the effective date of such termination, any indemnitor who was given notice shall nonetheless be liable hereunder for:

A. Bonds executed or authorized prior to such date, and renewals, substitutions and extensions thereof; and

B. Bonds executed pursuant to a bid or proposal Bond executed or authorized prior to such date and renewals, substitutions.

tions and extensions thereof; and

C. any maintenance or guarantee Bonds executed incidental to any other Bond executed prior to such date, and renewals, substitutions and extensions thereof.

04/17/2003 13:06 2014761240	TONI VUOLO	PAGE 10
ATTEST OR WITNESS	Uni-Con Floors, Inc. (Full Name & Address of Principal	al)
- Peri Merain Lori Monid	P.O. Box 267, 2137A, South Main MA 02724-0267 Tatherine L. Hebert, President INDEMNITORS	Street Fall River
ATTEST OR WITNESS	(Full Name & Address of Indemnito	n
	Ву	(SEAL
Signature Policen A Hebert Name Katherine L. Hebert	Signature Scott Hebert	
6 Hebert Way, Westport, MA Residence Address	<u>6 Hebert Way, Westport</u> Residence Address	, ма
2137A South Main St., Fall River, M Business Address	MA <u>2137A South Main St. F</u> Business Address	all River, MA
Name John A. Pacheco	Signature Chric K Packers Name Jantie K. Pacheco	
5 Granada Dr., Westport, MA Residenca Address	5 Granada Dr., Westport	., MA
2137A South Main St., Fall River, M. Business Address	A 2137A South Main St., F Business Address	all River, MA
Signature Tractic Melegyers Name Kristine Weizman	Signatura ///3'/ Name Avi Weizman	1,2/c
5 Granade Dr., Westport, MA Residence Address	5 Granada Dr., Westoort Residence Address	, MA
2137A South Main St., Fall River, MA Business Address	A <u>2137A South Main St., F.</u> Business Address	all River, MA
COLONIAL SURETY COMPANY	** TABAMA	· ·
(Surety)		
Lisa Porco	_ sheryanne it h	SAD-

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TONI VUOLO

	For Acknowledgement of Pri	ncipal's Signature	,
FN	STATE OF MA		,
2 W	COUNTY OF Bristol \$8.:		
. <u> </u>	On this 25th		
MOW	On this <u>25th</u> day of <u>August</u> comes Katherine L. Hebert	, in the year 19_ <u>,5</u> 38	, before me personal
Ř	being by me duly sworn, deposes and says that he resides in the	City of Mestners	, to me known, wh
CORPORATE ACKNOWLEDGEMENT	comes Katherine I. Hebert being by me duly sworn, deposes and says that he resides in the Tres ident the corporation described in and which executed the foregoing that the seal affixed to the said instrument is such corporate sea ors of said corporation, and that he signed his name thereto by	of <u>Uni-Gen Plears</u> , In 2, instrument; that he knows the seal; that it was so affixed by the order like order.	of the said corporation of the Board of Direct
U I	My commission expires December 20, 2002	- Luy	Mother-
PH P	STATE OF	Notary Public (Seal and Address)	Guy Massa
Ë	COUNTY OFs;:		
PAR			
ĕ	On this day of	,19	, before me personall
INDIVIDUAL OR PARTNERSHIP	came	executed the foregoing instrument	wn and known to me to and that he thereupor
2		Notery Public (Seal and Address)	
CORPORATE ACKNOWLEDGEMENT	On this day of comes being by me duly sworn, deposes and says that he resides in the C the corporation described in and which executed the foregoing i that the seal affixed to the said instrument is such corporate seal; ti said corporation, and that he signed his name thereto by like or	ity of	, to me known, who, that he is the
21		Notary Public (Seal and Address)	
SH S	STATE OF MA		•
ž	COUNTY OF Brietol ss.:		
PAR	On this 25th day of August		t
ő	came <u>Katherine</u> L. Hebert		
INDIVIDUAL OR PARTNERSHI	acknowledged to me that he executed the same.	xecuted the foregoing instrument,	and that he thereupon
-	My commission expires December 20, 2002	Notary Public Gi (Seal and Address)	Jy Massa
Ī	STATE OF MA		
E E	COUNTY OF Bristol ss.:		
Z Z	On this 25th day of August	, 19 <u>98</u>	before ma parsonally
9	came Scott Hebert	to make now	and known to mate
INDIVIDUAL OR PARTNERSHIP	came Scott Hebert be the person(s) (or member of the firm) described in and who exack nowledged to me that he executed the same.	secuted the foregoing instrument,	and that he thereupon
<u> </u>	My commission expires December 20, 2002	Notary Public Gu (Seal and Address)	y Massa

04/17/2003 13:06 2014761240 TONI VUOLO PAGE 12 For Acknowledgement of Principal's Signators STATE OF _______ CORPORATE ACKNOWLEDGEMENT COUNTY OF _____ On this ______, in the year 19_____, before me personally comes ______ that he is the city of ______ that he is the city of ______ that he is the the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Direct-ors of said corporation, and that he signed his name thereto by like order. Notery Public INDIVIDUAL OR PARTNERSHIP (Seal and Address) STATE OF _____ COUNTY OF _____ _____, 19_____, before me personally be the person(s) (or member of the firm) described in and who executed the foregoing instrument, and that he thereupon acknowledged to me that he executed the same. _ .__, to ma known and known to me to Notary Public (Seal and Address) For Acknowledgement of Individual Indemnitor's Signatures CORPORATE ACKNOWLEDGEMENT On this ______, in the year 19 _____, before me personally being by me duly sworn, deposes and says that he resides in the City of ---., to me known, who the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; _ of ___ that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order. Notary Public (Seal and Address) INDIVIDUAL OR PARTNERSHIP STATE OF MA COUNTY OF Bristol On this __25th _day of ___August ______, 19 98 ____, before me personally came <u>John A. Pacheco</u> be the person(s) (or member of the firm) described in and who executed the foregoing instrument, and that he thereupon ark nowledged to me that he executed the same. My commission expires December 20, 2002 Notary Public (Seal and Address) NDIVIDUAL OR PARTNERSHIP STATE OF MA COUNTY OF Bristol On this 25th ___, 19<u>__98</u>__, before me personally came Jamie K. Pacheco , to me known and known to me to be the person(s) (or member of the firm) described in and who executed the foregoing instrument, and that he thereupon acknowledged to me that he executed the same. My commission expires December 20, 2002 Notary Public (Seal and Address)

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TONI VUOLO

	For Acknowl	edgement of Princip	al's Signa:	
STATE OF				
COUNTY OF	· · · · · · · · · · · · · · · · · · ·	SS.:		
On this	day of		, jr: the year 19	_, before me personally
being by me duly so	vorn, deposes and says tha	the resides in the Cit	ty of	, to me known, who, that he is the
the corporation des	cribed in and which execut	ed the foregoing inst uch corporate seal; the	rument; that he knows the seal of het it was so affixed by the order	of the said corporation:
			Notary Public (Seel and Address)	·····
STATE OF	Paging treat and Equality in the contract of t		(**************************************	
COUNTY OF		\$5.:		
On this	day of			_, before me personally
be the person(s) (o acknowledged to m	r member of the firm) des e that he executed the sam	cribed in and who ex ne.	, to me know recuted the foregoing instrument,	on and known to me to and that he thereupon
			Notary Public (Seal and Address)	
he corporation des hat the seal affixed t	cribed in and which execu	ted the foregoing ins th corporate seal: the	y ofthat he knows the seel of the large of the seel of the large of the larg	the said corporation:
	a marina agrica me name		Notary Public (Seal and Address)	
			(Seal and Address)	
STATE OF MA	- A - T			
COUNTY OF Bri	.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	55 .:		
On this 2!	oth day of Au	gust	, t9 <u>98</u>	, before me personally
ne me beisoufs) (or	Weizman member of the firm) desc that he executed the same	FIDEO IN BOO Who exe	, to me know cuted the foregoing instrument,	and known to me to and that he thereupon
My commission	expires December 2	20, 2002	Notary Public Gu (Seal and Address)	y Messa
STATE OF MA	——————————————————————————————————————	_		
COUNTY OF Bris	tol	55. <i>:</i>		
On this <u>25</u>	ith day ofAL	gust	, 19 <u>98</u>	, before me personally
came <u>Avi Weiz</u> r	nan		cuted the foregoing instrument,	n and known to me to
be the person(s) (or acknowledged to me	member of the firm) desc that he executed the same	ribed in and who exe	cuted the foregoing instrument,	and that he thereupon
My commission	expires December 2	2002	Notary Public GU (Seal and Address)	y Massa

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UNITED STATES DISTRICT COURT	IN CLERKS OFFICE
DISTRICT OF MASSACHUSETTS	1 2 2 1 1 1 0 0 1 1 1 0 C

C. A. No. JAN 24 P 12: 12

COLONIAL SURETY COMPANY, Plaintiff,	U.S. DISTRICT O
v.)
UNI-CON FLOORS, INC., KATHERINE L. HEBERT, SCOTT HEBERT, JOHN J. PACHECO, JAMIE K. PACHECO and KRISTINE WEIZMAN, Defendants.)))))
)

AFFIDAVIT OF WAYNE T. NUNZIATA IN SUPPORT OF COLONIAL'S MOTION FOR PRELIMINARY INJUNCTION

- I, Wayne T. Nunziata, upon oath hereby depose and state as follows:
- 1. I am of legal age and I am the President of Colonial Surety Company ("Colonial"), which is in the business of, inter alia, issuing performance bonds and labor and material payment bonds ("Surety Bonds") on behalf of contractors to secure the performance of construction contracts for public and private projects.
- I have first hand knowledge of the facts and circumstances stated herein and the
 documents attached to Colonial's Complaint, which are referenced herein and
 made part hereof, and which documents are true and accurate copies of the
 documents presented.
- 3. I am responsible for handling claims against surety bonds underwritten by Colonial.

- 4. Uni-Con is, or was at all times relevant hereto, in the construction business.
- 5. On August 25, 1998, and to induce Colonial to issue performance and payment bonds, Uni-Con Floors, Inc. ("Uni-Con"), Katherine L. Hebert, Scott Hebert, John J. Pacheco, Jamie K. Pacheco and Kristine Weizman, collectively ("Defendants" or "Indemnitors"), executed a General Indemnity Agreement ("Indemnity Agreement") in which the Indemnitors jointly and severally agreed to exonerate and indemnify Colonial for all demands, liabilities, loss, costs, damages, expenses and attorneys' fees Colonial may incur as a result of Colonial's issuance of Surety Bonds on behalf of Uni-Con. Exhibit A to the Complaint, ¶3.

New Bridgewater-Raynham Regional High School Project

- 6. On or about July 26, 2004, Uni-Con, as subcontractor, entered into a contract ("High School Subcontract") with Bacon Construction Co., Inc. ("Bacon"), as general contractor, wherein Uni-Con agreed to furnish the labor, materials and equipment necessary to perform certain tile work at the project known as the New Bridgewater-Raynham Regional High School Project in Bridgewater, Massachusetts ("High School Project").
- 7. Pursuant to the Indemnity Agreement, Colonial, as surety, furnished a performance bond and a labor and materials payment bond on behalf of Uni-Con, as principal, for Bacon, as obligee, for the High School Project.
- 8. On September 15, 2006, Bacon declared Uni-Con in default of the High School Subcontract and notified Colonial of same.

- On September 29, 2006, Bacon terminated Uni-Con's High School Subcontract
 and made demand upon Colonial, pursuant to Colonial's performance bond, to
 complete Uni-Con's work at the High School Project.
- 10. Upon termination of Uni-Con's High School Subcontract, Colonial, as surety, assumed completion of Uni-Con's High School Subcontract and established a reserve to cover the anticipated costs of completing same as well as paying suppliers which furnished materials to Uni-Con for use at the High School Project.
- 11. As a result of Uni-Con's default on the High School Project, E. T. Tile And Stone, Inc. ("ET Tile") has made a claim in the amount of \$8,200.00 against Colonial for labor and materials allegedly furnished to the High School Project.

Williams Elementary School Project

- 12. On or about June 9, 2004, Uni-Con, as subcontractor, entered into a contract ("Williams School Subcontract") with Brait Builders Corporation ("Brait"), as general contractor, wherein Uni-Con agreed to furnish the labor, materials and equipment necessary to perform certain flooring work at the project known as the Williams Elementary School in Bridgewater, Massachusetts ("Williams School Project").
- 13. Pursuant to the Indemnity Agreement, Colonial, as surety, furnished a performance bond and a labor and materials payment bond on behalf of Uni-Con, as principal, for Brait, as obligee, for the Williams School Project.

- 14. On September 9, 2006 Brait declared Uni-Con in default of the Williams School Subcontract and notified Colonial of its obligation under the performance bond to cure Uni-Con's default on the Williams School Subcontract.
- 15. Colonial, as surety, promptly assumed completion of Uni-Con's Williams School Subcontract and established a reserve to cover all anticipated costs.
- 16. As a result of Uni-Con's default on the Williams School Project, Colonial has been named a defendant, along with Uni-Con, in a Massachusetts Superior Court matter captioned <u>Freudenberg Building Systems</u>, <u>Inc. v. Colonial Surety Company et al.</u>, Essex Superior Court, C. A. No. 06-01850 wherein the Plaintiff seeks \$41,171.62 for materials allegedly delivered to the Williams School Project.

The General Indemnity Agreement

- 17. The Indemnity Agreement defines the principal, Uni-Con, as being in default with respect to a bonded contract if, *inter alia*, the principal breaches, abandons or repudiates the contract, or if the obligee or any beneficiary of a bond declares the principal to be in default. Exhibit A to the Complaint, ¶5.
- 18. In accordance with the Indemnity Agreement, Colonial notified Defendants of the reserves established for the High School Project and the Williams School Project and demanded Defendants provide cash or property as collateral security for the established reserves. Exhibit A to the Complaint, ¶7.
- 19. Upon default, Colonial, as surety, may, *inter alia*, assume administration of any contract and arrange for completion thereof, and take possession of the principal's equipment, materials, office, book and records, etc. as may be necessary for the completion of the contract. Exhibit A to the Complaint, ¶6.

- 20. Pursuant to the terms and conditions of the Indemnity Agreement, the Defendants are required "to indemnify and save harmless [Colonial] from and against any and all (i) demands, liabilities, loss, costs, damages or expenses of whatever nature or kind including fees of attorneys and all other expenses," Exhibit A to the Complaint, ¶3.
- 21. Pursuant to the terms and conditions of the Indemnity Agreement, "[i]f a claim is made against [Colonial], or if [Colonial] deems it necessary to establish a reserve for potential claims, and upon demand from [Colonial], [the Defendants] shall deposit with [Colonial] cash or other property acceptable to [Colonial]" Exhibit A to the Complaint, ¶7.
- 22. On or about October 16, 2006, Colonial made demand (Exhibit B to the Complaint) upon Defendants for the following as permitted by the Indemnity Agreement: (i) indemnification (Exhibit A to the Complaint, ¶3); and (ii) security (Exhibit A to the Complaint, ¶7).
- 23. Despite Colonial's demand, the Defendants have failed and refused to respond or to indemnify, exonerate, or provide security to Colonial as required by the Indemnity Agreement.
- 24. As a result of the claims, lawsuits and performance obligations arising from Uni-Con's defaults, Colonial must investigate and either pay or defend claims, and incur substantial expenses in completing Uni-Con's work on the High School Project and the Williams School Project.

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- 25. Colonial has set a reserve of \$400,000.00 and has, to date, paid \$381,597.97 in completing Uni-Con's work on the High School Project and the Williams School Project.
- 26. To date, the Indemnitors have not made any payments to Colonial.
- 27. Colonial's attorneys' fees and costs will continue to accrue as a result of Uni-Con's default on the High School Project and the Williams School Project.
- 28. Colonial will suffer irreparable harm if the relief requested in Colonial's Motion For Preliminary Injunction is denied as the funds and property of the Defendants will be forever lost, concealed and converted leaving Colonial no ability to recover same.

Signed under the penalties of perjury this $\frac{23}{3}$ day of January, 2007.

Wayne T. Nunziata, President Colonial Surety Company

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